

Re The Undercover Policing Inquiry

OPEN APPLICATION FOR RESTRICTION ORDER (ANONYMITY) RE: HN241 SUBMITTED ON BEHALF OF THE MPS

Restriction Order Sought

1. The MPS apply for a restriction order over the real identity of HN241 to last indefinitely in the following terms:
 - (1) No direct or indirect disclosure of HN241's real identity (including any description or image capable of identifying HN241) beyond the Chairman and Inquiry team;
 - (2) No direct or indirect disclosure of HN241's cover identity (including any description or image capable of identifying HN241) beyond the Chairman and Inquiry team;
 - (3) The Commissioner reserves the right to make further submission as to the effective operation of this Restriction Order during the course of the Inquiry.

Legal Basis for the Application

2. The Application is made on the following statutory basis:
 - s.17(3) of the Inquiries Act 2005: the duty to act with fairness in the procedure or conduct of an inquiry
 - s.19(3)(a) of the Inquiries Act 2005 and Article 8 ECHR: the duty to act in a way that is not incompatible with the right to private and family life under Article 8 ECHR
 - s.19(3)(b) read together with s.19(4)(b)-(d) of the Inquiries Act 2005: conducive to the Inquiry fulfilling its terms of reference or necessary in the public interest, having regard in particular to the matters mentioned in subsection (4).
3. The applicable legal principles have been comprehensively set out in the Chairman's Restriction Order: Legal Principles and Approach Ruling ("the Principles Ruling") of 3 May 2016. Regard has also been had to the restriction order rulings in respect of Cairo and the 'Minded to' note dated 25 October 2016 in respect of Jaipur and Karachi.

Evidence in support

4. This application is supplemented by a closed risk assessment, which is not to be disseminated further than the Chairman and the Inquiry team.

Outline reasons:

Section 17: statutory and common law fairness

5. A restriction order protecting HN241's real and cover identity is required in the application of statutory and common law principles of fairness, in light of the risks outlined in the risk assessment, most particularly the risk of interference in his/her private and family life. The considerations which apply are highlighted below in relation to s.19(3)(b) and s.19(4).

Section 19(3)(a) and Article 8

6. A restriction order protecting HN241's identity is required in order for the Inquiry to meet its duty under the Human Rights Act 1998 not to act in a way which is incompatible with a Convention right. The Convention right in issue is Article 8.
7. Disclosure of HN241's real name would amount to a disproportionate interference with his/her right to private and family life. The evidential basis for this is as set out in the risk assessment (see §14 and §16.2 of the risk assessment).
8. There is a real risk that disclosure of HN241's cover identity will lead to discovery of his/her real identity (see §4, §12.1, §15.3 and §16 of the risk assessment). Disclosure of his/her cover identity would also therefore result in a disproportionate interference with his/her right to private and family life.

Sections 19(3)(b) and 19(4)

9. A restriction order protecting HN241's's real and cover identity is conducive to the Inquiry fulfilling its terms of reference or is necessary in the public interest, having regard in particular to the factors set out in s.19(4) of the Act. The Inquiry Chairman has indicated the approach he will take at paragraph 152 of the Principles Ruling:

"...when considering whether to make an order restricting disclosure of any relevant particular piece of information on public interest grounds I will be required to:

- (1) identify the public interest in non-disclosure;*
- (2) assess the risk and level of harm to the public interest that would follow disclosure of that information;*
- (3) identify the public interest in disclosure;*
- (4) assess the risk and level of harm to the public interest that would follow non-disclosure of that information;*
- (5) make in respect of that information a fact sensitive assessment of the position at which the public interest balance should rest".*

The public interest in non-disclosure

10. It is in the public interest for HN241's real identity to be restricted on the basis that it would avoid or reduce the risk of causing harm to this officer, or his/her family, namely interference with their private lives. The evidential basis for this is the risk assessment.
11. The same public interest demands the restriction of HN241's cover identity, as there is a reasonable risk that disclosure of the cover identity would lead to his/her real identity.
12. It is furthermore in the public interest for HN241's identity to be restricted on the basis it would avoid or reduce the risk of damage to effective policing (see Risk Assessment at §4).

The public interest in disclosure

13. The MPS appreciates that the general presumption in favour of openness is a factor which weighs against the making of a Restriction Order in HN241's case, particularly as this application extends over both the real and cover identities. The MPS submits this factor is outweighed, in this case, by the public interests in favour of non disclosure.

Where does the public interest balance lie?

14. The MPS has considered the Chairman's Restriction Order ruling dated 3rd May 2016. The MPS has particular regard to the presumption of openness in the Public Inquiry and the public interest in investigating these matters as openly as possible.
15. However, in the particular circumstances of this case we invite the Chairman to conclude that the public interest favours non-disclosure. In short:
 - a) Disclosure of his/her real name would amount to a disproportionate interference with HN241's right to private and family life, as protected by Article 8 ECHR;
 - b) In addition, the public interest in avoiding harm (in the form of interference) to HN241 and his/her family is sufficient to demand restriction of his/her real and cover identity;
 - c) Restriction is also necessary in order to reduce the risk of damage to effective policing;
 - d) The interests of fairness fall in favour of non-disclosure of HN241's real and cover identity.

